

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

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Weiskopf  
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FILE: B-211790

DATE: April 18, 1984

MATTER OF: Ensign-Bickford Company

## DIGEST:

1. Contracting agency reasonably evaluated protester's proposal for developing a laser arm/fire device as technically unacceptable where the proposal failed to include detailed information establishing the feasibility and desirability of its proposed approach as required by the solicitation, and where the proposal was significantly deficient in detail as compared to the proposals included in the competitive range.
2. GAO will not find an evaluation biased if the record provides a reasonable basis for it since the critical issue is not the motivation of the evaluators but whether all offerors were treated fairly and equally.
3. The selection of an evaluator is primarily a matter within the procuring activity's discretion, which GAO generally will not question absent evidence of bias.
4. The fact that the agency found the protester's proposal technically acceptable under a similar prior procurement does not establish that it unreasonably failed to do so in a subsequent one. The propriety of an award in a negotiated procurement depends on the facts and circumstances of the particular procurement.
5. Proposals basically must be evaluated on the basis of information furnished with them; no matter how capable an offeror may be, it cannot expect to be considered in the competitive range if it does not submit an adequately written proposal.

Ensign-Bickford Company protests the Air Force's rejection of its offer, without discussions, to design and

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provide a prototype laser arm/fire device that can be remotely activated from the cockpit to safe, arm and fire up to 15 rocket motors on missiles aboard a fighter aircraft. The solicitation, request for proposals No. F04611-83-R-0013, advised potential offerors that the Air Force contemplated awarding a cost-plus-fixed-fee contract to the offeror that submitted the proposal deemed most advantageous to the government based principally on the offeror's technical approach and, to a lesser extent, on cost and past performance. The Air Force found Ensign-Bickford's proposal to be technically unacceptable, and rejected it without conducting discussions or requesting further information from the offeror.

Ensign-Bickford contends that the Air Force's technical evaluation was unreasonable, and was tainted by bias and an alleged conflict of interest. Ensign-Bickford also points out that the same activity had determined an Ensign-Bickford proposal to be acceptable under a previous solicitation which the protester alleges to be similar to the current one. The Air Force has withheld making an award pending the outcome of the protest.

We deny the protest.

#### I. The Solicitation and Evaluation

The solicitation required the submittal of separate technical and price proposals. Under the section captioned "EVALUATION FACTORS FOR AWARD," the solicitation identified the following six technical evaluation criteria and their relative importance:

<u>Criteria</u>	<u>Order of Importance</u>
Understanding of the Problem	1
Soundness of Approach	1
Organization and Manpower	2
Other Technical Considerations (basically facilities and equipment)	3
Unique and Valuable Bonuses (for ideas enhancing the probability of the program's success)	4
Compliance with Requirements	4

This section of the solicitation expressly warned offerors that the first two criteria were critical, and that a rating of poor or unsatisfactory under either

criterion could result in a proposal being rated technically unacceptable and being eliminated from further consideration. Since these two criteria essentially provided the standard under which Ensign-Bickford's offer was rejected, they are set forth below:

"Understanding of the Problem: The thorough knowledge of laser, fiber optic and arm/fire device technology; the need for a comprehensive knowledge of present and future fire control systems as they pertain to rocket motor ignition; the extent of understanding of the parameters affecting laser system and arm/fire device design and appropriate analysis; an understanding of required testing and verification of critical design areas e.g., energy distributors, optic line monitoring device, quick release interfaces, highly reliable and easily maintainable components; in-depth knowledge of laser and fiber optic fabrication and evaluation; the amount of detailed knowledge in designing, fabricating and demonstrating components and lasers.

"Soundness of Approach: The methods used to obtain information on present and future fire control systems; the approach used to identify and rank candidate concepts; the extent of the proposed design and analysis; extensive test program to provide verification of structural integrity and energy transmission capability of critical design areas; a definitive and logical progression of efforts to evaluate and select the most promising design; a realistic and complete program structure with respect to schedule and milestones."

The Air Force's technical evaluators rated Ensign-Bickford's technical proposal as "poor" under both critical criteria, and therefore found Ensign-Bickford's proposal technically unacceptable. It is clear from the evaluation documents that the evaluators considered Ensign-Bickford's proposed baseline design as having little probability of success. The major problem with Ensign-Bickford's proposal appears to have been its failure to demonstrate adequately its knowledge of lasers, fiber optics and the parameters affecting the fire device's design in an analysis that supported the firm's choice of design.

## II. Issues

Initially, in challenging the propriety of the Air Force's technical evaluation, Ensign-Bickford complained that the Air Force had failed to provide it with details of perceived deficiencies in its proposal. The Air Force subsequently detailed the deficiencies (discussed infra) perceived in Ensign-Bickford's proposal. The protester now argues that: A) the Air Force had an undisclosed preference for certain technical approaches, and B) one person who participated in preparing the Air Force's justification of the technical evaluation, Dr. L.C. Yang, was biased in favor of another offeror and had a conflict of interest from, among other things, having been previously employed by that competitor.

The protester further contends that its rejection under the current solicitation was unreasonable since the same contracting activity previously had found Ensign-Bickford's technology and approach to be technically acceptable under solicitation No. F04611-81-R-0012, which the protester alleges had the same basic objectives as the current solicitation. The protester argues that the Air Force implicitly recognized the merits of its technical approach by borrowing concepts from Ensign-Bickford's previous proposal to write the specifications for the current solicitation. In this regard, the protester maintains that the Air Force did not decide that laser technology was a realistic approach to arm/fire devices until Ensign-Bickford successfully demonstrated the viability of its system to the Air Force in 1981 and 1982.

The protester also contends that it is eminently qualified to perform the contract. The protester states that, as far as it is aware, it is the only firm to have already designed and developed a laser system that works for the specific application required by the current solicitation, and that it probably has more knowledge and experience than any Air Force representative or private company at this time. In its own words, Ensign-Bickford therefore is "mystified" at whatever logic would support the Air Force's decision to remove it from the competition, thereby denying the government the benefit of its expertise without even an attempt at negotiation.

## III. Discussion and Analysis

Before discussing the merits of each individual issue, we point out that the evaluation of proposals and the

determination of firms that will be included in negotiations are principally matters within the discretion of the procuring agency, since that agency is responsible for identifying its needs and the best method of accommodating them. We will not question an agency's evaluation of a proposal absent a showing that the agency's determination was unreasonable or in violation of procurement laws or regulations. See MacGregor Athletic Products, B-211452, September 23, 1983, 83-2 CPD 366.

Using this standard, we proceed to discuss the issues.

A. Allegedly Undisclosed Requirements

The protester submits two examples of the Air Force's allegedly evaluating its technical proposal against hidden requirements. The first is the Air Force's downgrading the proposal for not addressing the application of laser initiation to other fields such as underwater mining or artillery ignition, when the solicitation only required that the contractor conduct a study to determine applications of laser initiation other than in rocket motors that could include, but not be limited to, systems such as ejection seats or stage separation of ballistic missiles. The second example involves the Air Force's determination that Ensign-Bickford's proposed initiation system (to ignite the rocket motors) was unacceptable because the firm's drawings showed fiber optic lines running directly into the pyrotechnic or secondary explosive material used to ignite the motors, whereas nowhere in the solicitation did the Air Force preclude such an approach or specify a preference for another approach. With regard to the second example, the solicitation only required that the contractor design special end fittings or connectors for fiber optic lines, with particular attention being given to the design of the connector where the fiber optic lines interface with the rocket motor.

We first point out that we see nothing improper in the Air Force's evaluation of these aspects of the protester's proposal in general, since they clearly were reasonably related to the critical evaluation criteria set out above. While offerors must be advised of the major criteria against which their proposals will be evaluated, the precise evaluation considerations need not be disclosed so long as they are reasonably related to the criteria listed in the solicitation. See Kirk-Mayer, Inc., B-208582, September 2, 1983, 83-2 CPD 288.

We do not believe the protester's low ranking in these proposal aspects resulted from the Air Force's application of unannounced requirements. Regarding the first example, Ensign-Bickford stated in its proposal that it would review laser initiation in seven broad areas while another offeror, who was found technically acceptable, submitted a list of more than 60 applications including those identified by the Air Force (undersea mining and artillery ignition). It is apparent that the Air Force in the RFP did not apply a hidden requirement for underwater mining and artillery ignition applications, but merely compared Ensign-Bickford's proposed areas of review with those of the other offerors. As stated previously, the evaluation of the relative merits of proposals principally is the responsibility of the contracting agency, and it requires weighing competing subjective considerations and exercising sound discretion. Price Waterhouse & Co., B-203642, February 8, 1982, 82-1 CPD 103. We certainly do not believe the agency was unreasonable in determining that other proposals were significantly better in this area, and therefore giving the protester's proposal relatively low scores for approach, where other offerors submitted much more detail. See Ionics Incorporated, B-211180, March 13, 1984, 84-1 CPD \_\_\_\_.

Regarding the protester's second offered example, our review of the protester's proposal failed to uncover any detailed explanation or analysis dealing with problems that might be encountered with running fiber optic lines directly into the pyrotechnic material. In this regard, the solicitation expressly required offerors to identify basic difficulties, to explain principles which may be applied in their solution, and to provide details of proposed solutions. The Air Force's evaluation materials indicate that any initiator generates pressures in the order of 20,000 pounds per square inch--a fact the protester does not contest--but the protester's proposal failed to offer any explanation of how its system could withstand such pressures. Moreover, as the Air Force reports, the projected reliability of the protester's initiation method did not meet the Military Standard that the solicitation's specifications expressly made applicable to this procurement.

We therefore find the downgrading of Ensign-Bickford's proposed initiation method resulted from the protester's failure to meet the requirements of the solicitation and

not from the Air Force's application of hidden requirements. A proposal must establish the desirability of the offeror's proposed approach and that its approach will meet the agency's needs where, as here, the solicitation contains express requirements for such information in detail. See Radiation Systems, Inc., B-211732, October 11, 1983, 83-2 CPD 434. Since the protester's proposal failed to include required detail, we believe that the agency's evaluation was reasonable.

B. Alleged Bias and Conflict of Interest

The protester cites the Air Force's evaluation of its proposed initiation method as evidence of bias by Dr. Yang, whom the Air Force reports it funded to be a member of the evaluation team (apparently as a special employee of the government, see Weisblatt Electric Co., Inc., B-185952, August 18, 1976, 76-2 CPD 171, although the record is not clear about what role Dr. Yang actually played in the evaluation).

During the evaluation period, Dr. Yang was employed by the California Institute of Technology's Jet Propulsion Laboratory, where in the early 1970s he played a significant role in developing basically a "glass-window" design for the interface between the fiber optic lines and the chamber containing explosive or pyrotechnic material. In fact, Dr. Yang is the co-inventor of an optically detonated explosive device which includes a glass window and is covered by a patent assigned to the United States. The purpose of the window is to allow the transmission of the laser energy while at the same time confining the explosion. The record indicates that the project was funded by a firm involved in the current competition, and that while working on the project Dr. Yang was employed by that offeror.

These factors, argues the protester, indicate bias in favor of the glass-window design as well as a conflict of interest, which should have precluded Dr. Yang from participating in the evaluation.

Concerning bias, the protester has the heavy burden of proving its case, and unfair or prejudicial motives will not be attributed to evaluators or selection officials on the basis of inference or supposition. Reliability Sciences, Incorporated, B-205754.2, June 7, 1983, 83-1 CPD 612. Moreover, even where bias is shown, we will deny

a protest if there is no indication that the bias adversely affected the protester's competitive standing. Id. In this regard, the critical issue is whether all offerors were treated fairly and equally; we therefore will not find an evaluation biased or arbitrary if the record provides a reasonable basis for it. See CMI Corporation, 62 Comp. Gen. 645 (1983), 83-2 CPD 292.

Since we have already held that the agency has demonstrated a reasonable basis for downgrading Ensign-Bickford's proposal for its proposed direct-coupling initiation method, we take no objection to the Air Force's evaluation. Other technical evaluators and the Air Force's selection officials concurred in the decision to reject the protester's proposal, thus indicating the protester was not adversely affected by Dr. Yang's alleged involvement in any event.

Moreover, we do not believe the protester has met its burden of showing that Dr. Yang harbored an unfair bias against Ensign-Bickford or in favor of another offeror. Rather, the protester tries to infer bias from the circumstances of Dr. Yang's previous work. As stated previously, we will not attribute bias to selection officials on the basis of inference or supposition. Reliability Sciences Incorporated, supra.

The protester also argues that the same factors from which it infers bias gave Dr. Yang such a personal interest in this procurement as to have created a conflict of interest that should have barred him from participating in the evaluation. In support of this argument, the protester cites the provisions of 32 C.F.R. § 920.17(b)(2) (1982), which prohibit special government employees from taking part in any matter in which their outside business associates have a financial interest, and 32 C.F.R. § 920.4, which basically requires all Air Force personnel to avoid any action that might result in, or create the appearance of, a conflict of interest.

The selection of an evaluator is a matter falling primarily within the discretion of the procuring activity, and we generally will not question that discretion absent evidence of actual bias. Architectural Preservation Consultants; Resource Analysts, Inc., B-200872; B-200872.4; B-200955.2, December 8, 1981, 81-2 CPD 446. There is no rule or regulation of which we are aware that prohibits an evaluator from participating in the evaluation of a proposal submitted by an offeror by which he previously was



employed some years ago so long as there is no actual bias or conflict of interest. Id.

Regarding the patent which lists Dr. Yang as an inventor (U.S. Patent 3,812,783 issued May 28, 1974), we point out that Dr. Yang would not receive any royalties or financial benefit for any products of this procurement since the patent is assigned to the United States. The patent therefore does not give rise to a conflict of interest.

### C. Previous Solicitation and General Qualifications

The protester argues that it was unreasonable for the Air Force to reject Ensign-Bickford's proposal when the same contracting activity had found the protester's proposal for a laser arm/fire device to be technically acceptable under a prior solicitation that the protester alleges was similar to the one here. This argument, however, does not provide a valid basis for protest, since the propriety of each award under negotiated procurements depends on the facts and circumstances of each procurement, Medical Services Consultants, Inc.; MSH Development Services, Inc., B-203998, B-204115, May 25, 1982, 82-1 CPD 493, including, for example, the quality of the proposals submitted by the competition.

In any event, the prior solicitation was not similar to the current one in that the former solicitation covered the development of an arm/fire device capable of remotely initiating rocket motors in an expendable missile pod or tube (used only once) and did not specify an approach utilizing laser technology, whereas the current solicitation required the application of laser technology to develop a reusable arm/fire device to be mounted in an aircraft capable of remotely firing missiles aboard the aircraft. In the current procurement, the solicitation notified offerors that it would specifically evaluate an offeror's understanding of the applicable laser technology and proposed method of applying it to this particular project. The protester's demonstrated knowledge and application of laser technology was not an express evaluation factor in the prior solicitation.

As regards the protester's assertion of its qualifications for this contract and its expressed stupefaction at the Air Force's refusal to make even an attempt at negotiation, we point out that proposals basically must be evaluated on the basis of information furnished with them;

no matter how capable an offeror may be, it cannot expect to be considered in the competitive range and in line for discussions if it does not submit an adequately written proposal. Frequency Engineering Laboratories, B-212516, February 7, 1984, 84-1 CPD 151. Where the solicitation imposes specific information requirements (as here, where the solicitation required offerors to identify problems, explain applicable principles and provide details of proposed solutions), offerors are put on notice that they risk rejection if they fail to comply with those requirements. Id; Informatics, Inc., B-194926, July 2, 1980, 80-2 CPD 8. While individual deficiencies may be susceptible to correction through discussions, the aggregate of many such deficiencies may preclude an agency from making an intelligent evaluation, and the agency is not required to give the offeror an opportunity to rewrite its proposal. Informatics, Inc., supra.

Even if, as the protester alleges, the Air Force had determined its needs based on Ensign-Bickford's previous proposal and practical demonstrations, that would not relieve the protester from the burden of submitting an adequately written proposal. Moreover, while our review shows there indeed are similarities between Ensign-Bickford's prior proposal and the current specifications, the Air Force has submitted many published articles antedating Ensign-Bickford's proposal that describe the basic technology for the current specifications in much the same terms.

#### IV. Conclusion

We cannot find unreasonable the Air Force's view that Ensign-Bickford's offer is deficient in terms of the solicitation's informational requirements and in comparison with those proposals the Air Force decided to include in the competitive range. As indicated by the example of the protester's proposed direct-coupling initiation method, those deficiencies included the protester's failure to detail anticipated problems, describe alternative approaches considered and furnish justification for the approaches selected. We therefore believe the Air Force's decision to reject the protester's proposal as technically unacceptable was reasonable. See Ionics Incorporated, supra. The fact that the protester does not agree with the Air Force's

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judgment does not establish otherwise. Blurton, Banks & Associates, Inc., B-211702, October 12, 1983, 83-2 CPD 454.

The protest is denied.

*for Milton F. Auster*  
Comptroller General  
of the United States